BEST COPY
AVAILABLE

MT LEGISLATIVE HISTORY

Chapter 353 1987

Bill (H) 699 S _____ Original bill & hist. ___C

H. Committee on Business & Labor		S. Committee on Labor & Employment Relations	
Hearing Date(s) Feb 12	✓C	Hearing Date(s) Mar 12	✓C
_____	___C	_____	___C
_____	___C	_____	___C
_____	___C	_____	___C
Date Out Feb 12	✓C	Mar 12	✓C

Did this bill originate in an interim committee? ___Yes ___No

Committee _____ Report _____

Form CS-32
Rev. 1985

STATUS SHEET

50th LEGISLATIVE SESSION

BUSINESS AND LABOR COMMITTEE

HOUSE BILL NUMBER	ENTERED COM. DATE	DATE CONSIDERED	OUT OF COM.	DO PASS DATE	DO NOT PASS DATE	DO PASS AS AMENDED DATE	DO NOT PASS AS AMENDED DATE	BE CONCURRED IN DATE	BE NOT CONCURRED IN DATE	BE CONCURRED IN AMENDED DATE	BE NOT CONCURRED IN AS AMENDED DATE
699	2/13/87	2/17/87	2/17/87			2/17/87					
719	2/13/87	2/17/87	tabled 2/17/87								
723	2/13/87	2/17/87	tabled 2/17/87								
727	2/13/87	2/16/87	2/16/87			2/16/87					
728	2/13/87	2/17/87	tabled 2/17/87								
763	2/16/87	2/18/87	tabled 2/18/87								
765	2/16/87	2/18/87	2/18/87	2/18/87							
769	2/16/87	2/18/87	2/18/87			2/18/87					
771	2/16/87	2/18/87	2/18/87	2/18/87							
772	2/16/87	2/18/87	2/18/87			2/18/87					
784	2/17/87	2/19/87	2/19/87			2/19/87					
789	2/17/87	2/19/87	2/24/87			2/24/87					
796	2/17/87	2/19/87	2/19/87	2/19/87							
799	2/18/87	2/19/87	tabled 2/19/87								

Use a separate sheet for Senate Bills, House Bills, and Resolutions.

Chairman Kitselman asked if services such as Manpower or Kelly Girl are agencies or employers. Mr. Stout responded that they are employers.

CLOSING

Rep. Connelly stated this bill is requiring that Job Service do the job they are specified to do.

HOUSE BILL NO. 699 - Exclude Outside Salesmen From Overtime Compensation Requirements, sponsored by Rep. Norm Wallin, House District No. 78, Bozeman. Rep. Wallin stated this bill is an act to exclude outside salesmen from overtime compensation requirements from the state wage laws. He said an outside salesman does the greater share of his work hours away from the establishment of his employer and away from direct supervision. He commented that the amount of time spent selling can't be controlled by the employer, and this bill recognizes that.

PROPONENTS

George Moore, Executive Director, Montana Press Association. Mr. Moore stated that the approach that they have taken on this bill is to basically seek conformity with the fair labor standards at and regulations of the U. S. Department of Labor. Exhibit No. 4. He said having the exemption would enhance employment opportunities for the salesperson, enhance the marketing climate, generate increased sales for the retail service sectors, and would make the job more rewarding for the salesperson, both professionally and financially because of commissions involved.

Robert Bullock, advertising salesperson, Bozeman Chronicle. Mr. Bullock stated that selling is such that it can't be done on a 40 hour week. He said that he can manage his time more efficiently if he can work more hours when the need arises, and therefore, both the newspaper and he will benefit by his being able to do his job most efficiently.

Ron Scoles, account salesman, Billings Gazette, Billings. Mr. Scoles stated that he feels it is up to him to best see fit on how to do his job, and if this was set at a 40 hour week, there is no time for him to do his job efficiently. He wants to be able to govern his time, but if he is restricted to a 40 hour week, he said, he would not be able to do that.

Fred Lindstrom, Bozeman Daily Chronicle. Mr. Lindstrom stated that he likes the freedom to work the hours he wants and the way he wants. He said the type of work they do cannot be restricted to a 40 hour week.

Gary Sullivan, Missoulian Newspaper. Mr. Sullivan stated he does not want to be paid overtime, or be restricted to a 40 hour week. He said that sales is a different type of job than one that can be done from 8 a.m. to 5:00 p.m., and wants to be able to work as many hours as he needs to get the job done.

Joann Davis, Billings Gazette. Ms. Davis stated she agrees with all the other speakers, and that she did not want to be restricted to a 40 hour week.

Rick Robbins, Billings Gazette. Mr. Robbins stated that they can't keep proper hours, and wants to be able to set his own hours.

Loretta Breslin, Billings Gazette. Ms. Breslin stated she represents the other 13 salespeople for the Gazette. She said they want to be treated as professionals and be able to manage their own time, and all support this bill.

OPPONENTS

Don Judge, representing the AFL-CIO. Mr. Judge stated they consider this another piece of exclusionary legislation that has been offered by the newspaper this year. He said there is nothing that stops these people from working an excess of 40 hours a week; the law simply demands that they be paid overtime for such work. He commented that if additional exclusions from the law are continually allowed and the laws are continually changed in the state, the base will eventually be taken from the economic development. He added that the less that is required by law to pay people and treat people fairly, the more chance there is for abuse of that law.

QUESTIONS

Rep. Cohen asked for explanation regarding the reference in the bill to the term "who is excluded under 29-USC-213-31". Rep. Wallin responded that exclusions are listed in the bill. Mr. Voeller responded that outside salesmen are exempt under federal law, and that law states that if a person spends 80% or more of his time selling outside the office, he is exempt. He said this bill would assure conformity of this with federal regulation.

CLOSING

Rep. Wallin stated the federal law states specifically, and the bill is attempting to adopt the federal regulations. He said this bill is in the interest of both the employers and employees.

competitive nature of the markets that are having a difficult time meeting all their costs, or the injured worker that is not going to be compensated for his injuries, or the employer that has been doing better and can afford to pay the costs.

Rep. Thomas stated that this bill is not going to work and hoped that Mr. Judge would work with others to get something that will work that is fair, and maybe in the next session can address funding the uninsured workers compensation fund.

Mr. Judge responded that they have been working with the Advisory Council of the Workers' Compensation Division, but there are no answers. The fact is that there are people violating the law and there are no mechanisms for enforcing the law, but they will accept the challenge and continue to work at finding a way.

CLOSING

Rep. Whalen stated that the most fair way to compensate the injured workers is to have the employer pay for it, but the fact is that there are some employers that are not carrying workers'compensation insurance. He said that part of the problem may be that the Division is not enforcing the laws, but he suggests that most employers are conscientious and would carry workers' compensation if they are capable. He commented that it may be unfair to impose this tax on the employers that are doing better by the Montana economy, but it is imminently more unfair to make the injured worker pay for it. He added there is no mechanism that will be completely fair because of the nature of the situation but somebody is going to have to pay for somebody else.

EXECUTIVE ACTION - February 17, 1987 - 11:00 a.m.

ACTION ON HOUSE BILL NO. 723

Rep. Smith explained that they have a problem of an excess of $100 million in the state fund that in some way has to be acquired or benefits can't be paid, and because of the condition the fund is in right now, there isn't anything that can be done.

Rep. Smith moved that House Bill No. 723 BE TABLED. The motion carried with Reps. Hansen, Driscoll, McCormick, and Cohen opposed.

ACTION ON HOUSE BILL NO. 699

Rep. Wallin moved that House Bill No. 699 DO PASS.

Rep. Cohen moved an amendment on line 9, strike the language from the word "who" through that subparagraph 1, and insert after the word "outside", insert the language "advertising media".

Rep. Cohen stated this would change the paragraph to read as follows: "an employee employed in a capacity outside advertising media salesmen, from the overtime compensation provisions of the fair labor standards act." Rep. Cohen stated that this would include all the newspaper salesmen, the radio and television and regular salesmen.

The motion failed by tie vote, 9 to 9.

Rep. Wallin reconsidered his vote to pass the amendment as that was the an important part of the bill, he said. This changed the vote to 10-8. The motion to accept the amendment carried.

Rep. Wallin moved that House Bill No. 699 DO PASS AS AMENDED. The motion carried with a vote of 10 to 8.

ACTION ON HOUSE BILL NO. 719

Rep. Glaser moved that House Bill No. 719 BE TABLED. The motion carried 10 to 8.

ACTION ON HOUSE BILL NO. 728

Rep. Driscoll moved that House Bill NO. 728 DO PASS.

Rep. Driscoll moved to amend on page 1, line 20-22, after "employment agency", insert "temporary service contractors", and on page 2, line 20-21, strike the new language.

Rep. Driscoll stated this would answer their concerns about the regulation of the temporary service contractors. He said they would not be put under the same regulations as the employment agencies, but still would not require the Department to test and make referrals to these employment agencies or temporary service contractors.

Rep. Simon moved a substitute motion that House Bill No. 728 BE TABLED. The motion failed by tie vote, 9 to 9.

There was further discussion regarding the amendments offered.

Rep. Swysgood stated that there was a considerable amount of confusion on the definitions of temporary service contractors and employment agencies in the bill.

DAILY ROLL CALL

BUSINESS & LABOR COMMITTEE

50th LEGISLATIVE SESSION -- 1987

Date February 17, 1987

NAME	PRESENT	ABSENT	EXCUSED
REP. LES KITSELMAN, CHAIRMAN	✓		
REP. FRED THOMAS, VICE-CHAIRMAN	✓		
REP. BOB BACHINI	✓		
REP. RAY BRANDEWIE	✓		
REP. JAN BROWN	✓		
REP. BEN COHEN	✓		
REP. JERRY DRISCOLL	✓		
REP. WILLIAM GLASER	✓		
REP. LARRY GRINDE	✓		
REP. STELLA JEAN HANSEN	✓		
REP. TOM JONES	✓		
REP. LLOYD MCCORMICK	✓		
REP. GERALD NISBET	✓		
REP. BOB PAVLOVICH	✓		
REP. BRUCE SIMON	✓		
REP. CLYDE SMITH	✓		
REP. CHARLES SWYSGOOD	✓		
REP. NORM WALLIN	✓		

CS-30

STANDING COMMITTEE REPORT

February 17 19 87

Mr. Speaker: We, the committee on BUSINESS AND LABOR

report HOUSE BILL NO. 699

☑ do pass ☐ be concurred in ☑ as amended
☐ do not pass ☐ be not concurred in ☐ statement of intent attached

REP. LES KITSELMAN Chairman

AMENDMENTS AS FOLLOWS:

1) Page 3, line 8
Following: "of"
Insert: "advertising medium"

2) Page 3, line 9
Following: "salesman"
Strike: "who is excluded under 29 U. S. C. 213(a) (1)"

FIRST WHITE
reading copy (color)

VISITORS' REGISTER

BUSINESS AND LABOR COMMITTEE

BILL NO. House Bill No. 699 DATE February 17, 1987

SPONSOR Rep. Norm Wallin

NAME (please print)	REPRESENTING	SUPPORT	OPPOSE
George W [illegible]	Dist. Press Assn.	X	
KENNETH FOSTER	Billings Gazette	X	
[illegible]	[illegible]	[illegible]	
Tom Scott	Ft. Peck Gazette	X	
Jack Robbins	Billings Gazette	X	
Noel ~~Stout~~	ARCO ~~ANDEX Corp~~		X
[illegible]	[illegible]	X	
[illegible]	[illegible]	X	
[illegible]	[illegible]	X	
Mike Smith	Lobbyist Council	X	
Mary D Willock	Missoula Newspapers	X	
[illegible]	[illegible]	X	
Mike Hall	Independent Record	X	
[illegible]	[illegible]	X	
Don Judge	MT STATE AFL-CIO		X
[illegible]	[illegible]		
[illegible]	[illegible]	[illegible]	

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR WITNESS STATEMENT FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.

CS-33

CHAIRMAN--SEN. JOHN "J.D." LYNCH
NORMAL SCHEDULE==> SITE: ROOM 413/415 DAYS: T-T-S TIME: 1:00 P.M.

SECRETARY-JULIE RADEMACHER

--BILL NO---	REFER DATE---	HEARING DATE---	CONSIDERATION DATES----------	COMMITTEE ACTION----------	REREFERRED TO COMM----	DATE OUT-
HB0381	2/12	3/19	03/19/87, 03/26/87	CONCUR AS AMENDED	02/18/87	03/26/87
GRADY, ED			COSMETOLOGISTS' UNEMPLOYMENT AND WORKERS' COMPENSATION COVERAGE			
HB0640	2/17	3/12	03/12/87	CONCUR AS AMENDED	02/17/87	03/12/87
SWIFT, BERNIE			REQUIRE WORKER TO NOTIFY OF INJURY WITHIN 24 HOURS TO CLAIM WORKERS'COMP.			
HB0689	2/21	3/12	03/12/87	CONCUR	02/21/87	03/12/87
SWIFT, BERNIE			WORKERS' COMP. INDEPENDENT CONTRACTOR EXEMPTION EFFECTIVE UNTIL CHANGED			
HB0699	2/23	3/12	03/12/87	CONCUR AS AMENDED	02/23/87	03/12/87
WALLIN, NORM			EXCLUDE OUTSIDE SALESMEN FROM OVERTIME COMPENSATION REQUIREMENTS			
HB0727	2/23	3/19	03/19/87	4/4 Tue	02/23/87	
WINSLOW, CAL			EXEMPT LIVE-IN EMPLOYEES FROM MINIMUM WAGE AND OVERTIME LAW			
HB0765	3/03	3/17	03/17/87			
VINCENT, JOHN			MONTANA JOBS ACT			
HB0772	2/23	3/24	03/24/87; 03/26/87	CONCUR AS AMENDED	02/23/87	03/26/87
BRANDEWIE, RAY			REVISE PREVAILING WAGE RATE LAWS			
HB0810	3/02	3/19	03/19/87	CONCUR	03/02/87	03/19/87
HARRINGTON, DAN			PROVIDE HEAD START EMPLOYEES RIGHT TO BARGAIN COLLECTIVELY			
HB0884	4/03	4/07	04/07/87; 04/09/87	CONCUR AS AMENDED	4/04/87	4/09/87
SMITH, CLYDE			PAYROLL TAX TO FUND WORKERS' COMP. PLAN NO. 3; SALE OF BONDS			

MINUTES OF THE MEETING
LABOR AND EMPLOYMENT RELATIONS COMMITTEE
MONTANA STATE SENATE

March 12, 1987

The eighteenth meeting of the Labor and Employment Relations Committee was called to order by Chairman Lynch on March 12, 1987, at 1:00 p.m. in Room 413/415 of the State Capitol.

ROLL CALL: All members were present.

CONSIDERATION OF HOUSE BILL 699: Sponsor, Representative Norm Wallin, House District 78, stated this bill is an act to exclude outside salesmen from overtime compensation requirements of the state wage law.

PROPONENTS: Mr. George Moore, representing Montana Press Association, stated the employees' success depends on their own personal initiative and resourcefullness. This type situation exists with advertising sales people. This bill attempts to address the situation of overtime and enhance the marketing climate. It would make the work of the sales person more rewarding, professionally and financially.

Mr. Bob Bullock, representing the Bozeman Chronicle, said he worked for the Detroit News where he worked on a salary basis. He has learned advertising revenues are available to a newspaper at different times of the year for different amounts. He would adapt his schedule to be available to get those dollars when they are best reached. Mr. Bullock stated he has found a 40 hour week and an 8 hour day do not fit into that schedule. If this bill passes, it will help him personnaly, and it will help him do the best job.

Mr. Ron Scoles, representing the Billings Gazette, feels it would be detrimental to his performance if he was limited to an 8 hour day. He would like to be able to see his clients when it is convenient for them. He urged the committee to support this bill.

Mr. Richard Robbins, representing the Billings Gazette, stated the system is basically flawed.

Mr. Fred Lynch, representing himself, urged support of the committee.

Mr. Gary Selleck, representing The Missoulian newspaper, stated he supports this bill. He said people working in his field put in the time necessary to get the job done, and that is usually more than a 40 hour work week.

Lorretta Breslin, representing the Billings Gazette, stated the people she represents want to be treated as professionals to make their own decisions about their work time and to do their job to the best of their ability. Being restricted to a 40 hour work week does not permit them to work to their full potential.

OPPONENTS: Mr. Oliver D. Jones, III, representing himself, stated he is employed by the Independent Record in Helena. Mr. Jones stated under the current guidelines he is an hourly salesman. He is not paid commissions except for performances over and above the previous year. Currently he is involved in litigation against the Independent Record concerning this matter. Mr. Jones feels this bill would be detrimental to the people working in the Helena area because they are hourly employees. Also, there is no clear definition of an outside sales person or what they are paid.

Ms. Virginia Knight, representing her husband, who is an employee at the Helena Independent Record, stated their concern is with the lack of what constitutes the definition of an outside sales person. Her husband is paid an hourly wage, but asked how the hourly employees would be compensated for their overtime. These hourly employees are not on a commission, so they need to be compensated for their overtime.

Ms. Gladys Martinsen, representing herself, stated she is employed by The Independent Record and they are not sure the amount of work that will be required of them in their 8 hour day. They should be compensated for the overtime they work.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL 699: Senator Lynch stated he does not feel the opponents are in the same category as the proponents. He suggested there be an amendment that would direct this piece of legislation to people receiving commissions, and not affect the people working for an hourly wage.

Mr. Moore stated an amendment is possible, but the situation is the original commission involved the intent of the employee and the employer to hold the work to a 40 hour work week.

Mrs. Knight asked how the employees overtime would be effected if this bill passed. Senator Lynch stated this bill could take away for their overtime.

Mr. Moore stated he believes the Federal Fair Labor Standard Act would go into effect concerning hourly employees' overtime. There is a definition of outside sales persons under the Fair Labor Standards Act which is a person who spends 80% or more of their time out of the office. The federal law states anyone who works over 40 hours per week must receive overtime unless they are outside sales people. (See Exhibit 1).

Senator Manning asked Mr. Jones to respond to the question. Mr. Jones stated he does 75% of his work in the office.

Senator Thayer asked Mr. Moore if each newspaper in the state has different policies. Mr. Moore replied yes.

Senator Blaylock suggested there be an amendment with a clear definition of employees being excluded from overtime.

Rep. Wallin stated he feels the bill does not need to be amended.

Senator Haffey asked Mr. Killoy, representing the Montana Standard, if they are on salary. Mr. Killoy stated The Montana Standard employees are on salary, but if they work more than 40 hours per week, they receive overtime. Senator Haffey asked Mr. Killoy if this bill passes, would those employees remain on salary. Mr. Killoy replied no. Senator Haffey asked Mr. Mike Bolher, representing Dee Enterprises, Inc., if the employer could order their employee to work more than 8 hours per day. Mr. Bolher replied no, the employer could not order the employee to work 12 hours per day. This bill would just allow employees to work a longer day if he chose to work longer. Senator Haffey asked Mr. Bolher if, under any circumstance, would this bill cause any hardship on sales people. Mr. Bolher replied no.

Senator Lynch asked Rep. Wallin if this bill is primarily for the newspaper industry. Rep. Wallin replied yes. Senator Lynch suggested the amendment that a salesman paid on a commission or contract basis, who is primarily engaged in selling advertisements for radio or television employers. Mr. Bolher thought it could cover their situation.

There being no further questions, Rep. Wallin closed.

OPPONENTS: There were no opponents present.

QUESTIONS (OR DISCUSSION) ON HOUSE BILL NO. 689: Senator Keating asked Mr. Bob Robinson if this bill will expose the person who claims to be an employee only after he has been injured. Mr. Robinson stated this may do that, but mostly this bill will pick up on the person who claims to be an independent contractor until something happens, and then claim to be an employee. Senator Gage asked if there is a reason there is no effective date for this bill. Rep. Swift stated there is no specific reason, it was just overlooked.

Rep. Swift closed by urging the committee to support this bill.

DISPOSITION OF HOUSE BILL NO. 689: Senator Thayer made a motion that House Bill 689 BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

FURTHER DISCUSSION OF HOUSE BILL NO. 640: Senator Blaylock suggested amending the bill from 14 days to report the injury, to 30 days.

DISPOSITION OF HOUSE BILL NO. 640: Senator Blaylock made a motion to adopt the amendment. The motion carried 6-2. See attached roll call vote sheet.

Senator Keating made a motion that House Bill 640 AND AS AMENDED, BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

FURTHER DISCUSSION OF HOUSE BILL NO. 699: Senator Lynch stated there is an amendment to insert a new section into the bill, under exemptions an outside sales person paid on commission or on a contract basis, who is primarily employed in selling advertisements for a newspaper.

DISPOSITION OF HOUSE BILL NO. 699: Senator Keating made a motion to adopt the amendments. The motion carried unanimously.

Senator Manning made a motion that House Bill 699 AND AS AMENDED, BE CONCURRED IN. The motion CARRIED UNANIMOUSLY.

ADJOURNMENT: There being no further business to come before the committee, the hearing adjourned at 1:35 p.m.

SENATOR JOHN "J.D." LYNCH, Chairman

jr

LABOR AND EMPLOYMENT RELATIONS COMMITTEE

50th LEGISLATIVE SESSION -- 1987 Date 2/12/87

NAME	PRESENT	ABSENT	EXCUSED
John "J.D." Lynch Chairman	X		
Gene Thayer Vice Chairman	X		
Richard Manning	X		
Thomas Keating	X		
Chet Blaylock	X		
Delwyn Gage	X		
Jack Haffey	X		
Jack Galt	X		

Each day attach to minutes.

COMMITTEE ON Labor

DATE March 12, 1987

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One: Support	Check One: Oppose
George N. Wood	MT. Press Assn.	HB699	X	
LORETTA BRESLIN	BILLINGS GAZETTE	HB699	X	
Richard Robbins	Billings Gazette	HB699	X	
Dan J Kelly	Montana Standard	HB 699	X	
RM Scales	Billings Gazette	HB699	X	
Jinny Knight	Private interest	HB699	undecided	
Bruce K Smith	Bozeman Chronicle	HB699	X	
[illegible]	Chronicle	HB699	X	
Dr. Walter E. Bullock	Bozeman Chronicle	HB699	X	
Mary McClock	Montana Newspaper	HB699	X	
Chris Dahl	PRIVATE INTEREST ~~INTEREST FEED~~	HB699		✓
Mikki Hall	Montana Press Assn.	HB699	X	
[illegible]	Private Individual	HB699		✓
Jean A Turnery	Mont. AFL-CIO	HB699		✓

NAME: Ron Scoles DATE: 3/12/87

ADDRESS: 1125 TERRY AVE

PHONE: 259-1644

REPRESENTING WHOM? BIGS, GAZETTE

APPEARING ON WHICH PROPOSAL: HB699

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: Richard Robbins DATE: 3-12-87

ADDRESS: 1204 HOWARD, BILLINGS, MT

PHONE: 252-6928

REPRESENTING WHOM? Billings Gazette

APPEARING ON WHICH PROPOSAL: HB699

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: As an outdoor advertising media outside salesman, I feel the reporting process is a flawed waste of time.

I make my living by my wits. I do not need others to speak for me. I want to be responsible for my own actions.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: LORETTA BRUSUK DATE: MARCH 12, 1987

ADDRESS: P.O. BOX 2507 - BILLINGS MT 59103

PHONE: 657-1234

REPRESENTING WHOM? BILLINGS GAZETTE

APPEARING ON WHICH PROPOSAL: H.B. 699

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

NAME: George W. Moore DATE: 3/12/97

ADDRESS: 1906 N. Main, Suite C

PHONE: 443-2855

REPRESENTING WHOM? Yth. Press Assn.

APPEARING ON WHICH PROPOSAL: HB 697

DO YOU: SUPPORT? X AMEND? _____ OPPOSE? _____

COMMENTS: _____

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY.

ment of Labor that such employment of underage minors was unlawful. Mashburn v Tribble (1953, DC Ga) 24 CCH Lab Cas ¶ 67873.

Secretary of Labor was entitled to permanent injunction restraining defendant employer from violating child labor provisions of Fair Labor Standards Act, where employer had violated such provisions by employing, suffering, and permitting "oppressive child labor" to work in production of goods for interstate commerce, despite fact that employer was part-time family business manufacturing hamper tops for vegetable storage and shipment, employing extra help only during business seasons, and was not prosperous manufacturer seeking to increase wealth by paying low wages and using child labor, but on contrary, like employees, wore "the yoke of poverty," and struggled for existence, not for wealth. Mitchell v Thaxton (1958, DC Ga) 34 CCH Lab Cas ¶ 71313.

Secretary of Labor was entitled to injunction permanently enjoining defendant employer, his agents, servants, employees, and all persons acting or claiming to act on his behalf and interest, from violating child labor provisions of Fair Labor Standards Act, where it was shown that such employer had violated provisions of 29 USCS § 212(c) by employing "oppressive child labor" during school hours in harvesting of tomatoes for commerce, and had violated provisions of 29 USCS § 212(a) by delivering tomatoes for shipment in commerce within 30 days of such employment. Mitchell v Carmichael (1958, DC Ill) 36 CCH Lab Cas ¶ 65042.

Secretary of Labor was entitled to injunction permanently restraining defendant employer from violating child labor provisions of Fair Labor Standards Act through employment of children during school hours in picking of figs, fact that violations had ceased prior to institution of suit not making case moot, since defendant intended to continue to expose himself to risk of employing oppressive child labor in future by continuing to use minor children, although he indicated that hours would be restricted to non-school time, and fact of exception to child labor provisions of Fair Labor Standards Act permitting children to work in agriculture outside of school hours making it all the more mandatory that child labor provisions be strictly enforced as to employment during school hours. Mitchell v Munier (1958, DC Cal) 38 CCH Lab Cas ¶ 65781.

Injunction against violations of child labor provisions of Fair Labor Standards Act would be granted, where employer was custom broker of wool and mohair who employed, suffered, and permitted to work in and about his place of business four minors under age of 16 years, in loading on and unloading from trucks of wool and mohair for out-of-state purchasers. Mitchell v Witting (1961, DC Tex) 42 CCH Lab Cas ¶ 31071.

Secretary of Labor was entitled to permanent injunction against violations of child labor provisions of Fair Labor Standards Act, where defendant farm operator employed children under 16 years of age to pick cotton, substantial quantity of which was shipped in interstate commerce, and children were employed during school hours, and where violations of Act continued to occur even after defendant employer had been informed thereof by investigator for Wage and Hour division of Department of Labor, and after employer had given assurances that such violations would cease. Goldberg v Daniels (1962, DC Ga) 45 CCH Lab Cas ¶ 31314.

§ 213. Exemptions

(a) The provisions of sections 6 (except section 6(d) in the case of paragraph (1) of this subsection) and 7 [29 USCS §§ 206, 207] shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity (including any employee employed in the capacity of academic administrative personnel or teacher in elementary or secondary schools), or in the capacity of outside salesman (as such terms are defined and delimited from time to time by regulations of the Secretary, subject to the provisions of the Administrative Procedure Act except that [that] an employee of a retail or service establishment shall not be excluded from the definition of employee employed in a bona fide executive or administrative capacity because of the number of hours in

SENATE LABOR & EMPLOYMENT
EXHIBIT NO. 1
DATE 3/23/97
BILL NO. HB 1297

his workweek which he devotes to activities not directly or cl related to the performance of executive or administrative activiti less than 40 per centum of his hours worked in the workweek devoted to such activities); or

(2) any employee employed by any retail or service establishr (except an establishment or employee engaged in laundering, cleanin repairing clothing or fabrics or an establishment engaged in the op tion of a hospital, institution, or school described in section 3(s)(4) USCS § 203(s)(4)]), if more than 50 per centum of such establishme annual dollar volume of sales of goods or services is made within State in which the establishment is located, and such establishmen not in an enterprise described in section 3(s) [29 USCS § 203(s)] or s establishment has an annual dollar volume of sales which is less t $225,000 (exclusive of excise taxes at the retail level which are se rately stated). A "retail or service establishment" shall mean an est lishment 75 per centum of whose annual dollar volume of sales of goo or services (or of both) is not for resale and is recognized as retail sa or services in the particular industry; or

(3) any employee employed by an establishment which is an amusem or recreational establishment, if (A) it does not operate for more th seven months in any calendar year, or (B) during the preceding calend year, its average receipts for any six months of such year were not mo than 33⅓ per centum of its average receipts for the other six months such year; or

(4) any employee employed by an establishment which qualifies as exempt retail establishment under clause (2) of this subsection and recognized as a retail establishment in the particular industry notwith standing that such establishment makes or processes at the reta establishment the goods that it sells: Provided, That more than 85 pe centum of such establishment's annual dollar volume of sales of good so made or processed is made within the State in which the establish ment is located; or

(5) any employee employed in the catching, taking, propagating, harvest ing, cultivating, or farming of any kind of fish, shellfish, crustacea sponges, seaweeds, or other aquatic forms of animal and vegetable life or in the first processing, canning or packing such marine products at sea as an incident to, or in conjunction with, such fishing operations, including the going to and returning from work and loading and unloading when performed by any such employee; or

(6) any employee employed in agriculture (A) if such employee is employed by an employer who did not, during any calendar quarter during the preceding calendar year, use more than five hundred man-days of agriculture labor, (B) if such employee is the parent, spouse, child, or other member of his employer's immediate family, (C) if such employee (i) is employed as a hand harvest laborer and is paid on a piece rate basis in an operation which has been, and is customarily and

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date March 12, 1987 Bill No. HB 699 Time 2:00

NAME	YES	NO
John "J.D." Lynch, Chairman		
Gene Thayer, Vice Chairman		
Richard Manning		
Thomas Keating		
Chet Blaylock		
Delwyn Gage		
Jack Haffey		
Jack Galt		

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: Be Concurred In
As Amended
(Poulsen)

ROLL CALL VOTE

SENATE COMMITTEE LABOR AND EMPLOYMENT RELATIONS

Date March 12, 1987 Bill No. HB 1099 Time 2:00

NAME	YES	NO
John "J.D." Lynch, Chairman	X	
Gene Thayer, Vice Chairman	X	
Richard Manning	X	
Thomas Keating	X	
Chet Blaylock	X	
Delwyn Gage	X	
Jack Haffey	X	
Jack Galt	X	

Julie Rademacher
Secretary

John "J.D." Lynch
Chairman

Motion: Amendments

1987

STANDING COMMITTEE REPORT

March 12, 87
19

MR. PRESIDENT

We, your committee on LABOR AND EMPLOYMENT RELATIONS

having had under consideration HOUSE BILL No. 699

third reading copy (blue color)

EXCLUDE OUTSIDE SALESMEN FROM OVERTIME COMPENSATION REQUIREMENTS

(NALLIN) (BOYLAN)

Respectfully report as follows: That HOUSE BILL No. 699 be amended as follows:

1. Title, line 5.
Following: "EXCLUDE"
Insert: "CERTAIN NEWSPAPER"

2. Title, line 6.
Following: line 5
Strike: "MEDIA OUTSIDE"

3. Page 3, lines 10 through 13.
Strike: subsection (d) in its entirety
Insert: "(d) an outside salesman paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;"

AND AS AMENDED,
BE CONCURRED IN
~~DO PASS~~

~~DO NOT PASS~~

Sen. John "J.D." Lynch Chairman.